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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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In the Matter of

Jurisdictional Separations Reform and
Referral to the Federal-State Joint Board

CC Docket No. 80-286

REPLY COMMENTS
of the
GENERAL SERVICES ADMINISTRATION

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Summary

GSA responds to comments on a recommendation by the Federal–State Joint Board on Jurisdictional Separations (“Joint Board”) that the Commission freeze category relationships and allocation factors for price cap carriers, and allocation factors for carriers under rate–of–return regulation.

GSA explains that the Commission should not to heed requests to reject the Joint Board’s recommendation for a freeze. Most carriers demonstrate that changes in the communications markets and technology impact important assumptions that underlie the existing separations procedures. In addition, carriers explain that an interim freeze will provide time for the Commission to determine the appropriate separations methodologies for services and elements that did not even exist a few years ago — including unbundled network elements (“UNEs”), Internet messages in packet format, and services provided jointly by multiple carriers over digital lines. To facilitate this process, GSA urges the Commission to adopt the recommendation that LECs report how they are now treating UNEs and other new technologies when they implement the separations process.

Also, GSA explains that the Commission should not be swayed by allegations that once a freeze is adopted, it will become the *de facto* rule. Comments show that there are many drivers for change. Moreover, to maintain a nearer horizon for completion of this important objective, GSA concurs with the recommendation by one party that the Commission designate a two–year maximum freeze period, instead of the five year period suggested by the Joint Board.

Finally, GSA explains that the Commission should not adopt the suggestion of several parties that carriers be allowed to stop collecting and reporting separations data during the freeze. Carriers rebut contentions that it is necessary to reduce the complexity of the separations methodologies employed by larger carriers. Moreover, even if allocation factors are frozen, annual reporting of separated data in a uniform format will have numerous benefits.

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**REPLY COMMENTS
of the
GENERAL SERVICES ADMINISTRATION**

The General Services Administration ("GSA") submits these Comments on behalf of the customer interests of all Federal Executive Agencies ("FEAs") on the Public Notice ("Notice") released on August 15, 2000. The Notice seeks comments and replies on issues concerning a recommendation by the Joint Board to freeze most of the factors employed in the jurisdictional separations process.

I. INTRODUCTION

On July 21, 2000, the Joint Board released a *Recommended Decision* suggesting that the Commission freeze most parameters in the jurisdictional separations process.¹ The interim freeze would encompass all category relationships and allocation factors for price cap carriers, and allocation factors for carriers under rate-of-return regulation.² The freeze would be mandatory, and continue for five

¹ Notice, p. 1, citing *In the Matter of Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Recommended Decision, released July 21, 2000 ("*Recommended Decision*").

² *Id.*, p. 2.

years or until the Commission takes further steps in response to a recommendation by the Joint Board.³ The Joint Board explains that the primary reason for the moratorium is to ensure greater stability and predictability for the separated costs during a period of significant changes in the industry.⁴

On September 25, 2000, GSA submitted Comments in response to the Notice. In those Comments, GSA explained that there have been significant shifts in costs among investment accounts, as well as major changes in the scope and pattern of network usage because of many factors, including dramatic increases in Internet usage.⁵ Consequently, GSA recommended that the Commission adopt the freeze to allow the separations process to adjust to these changes and to allow time for the Commission to address issues such as the appropriate separations treatment of unbundled network elements ("UNEs"), Internet traffic, and services jointly provided over digital lines.⁶

In addition to GSA, 16 parties submitted comments in response to the Notice. These parties include:

- 8 incumbent local exchange carriers ("LECs") and groups of these carriers;
- 2 other carriers;
- 3 state regulatory agencies; and
- 3 consulting firms representing the interests of carriers.

In these Reply Comments, GSA responds to the positions advanced by those parties.

3 *Id.*

4 Recommended Decision, para. 17.

5 Comments of GSA, pp. 4-5.

6 *Id.*

II. THE COMMISSION SHOULD NOT HEED REQUESTS TO REJECT THE JOINT BOARD'S RECOMMENDATIONS.

Several parties recommend that the Commission reject the Joint Board's recommendation for a freeze encompassing most of the factors in the jurisdictional separations process. For example, the People of the State of California and the California Public Utilities Commission ("California") submitted comments opposing the freeze. California asserts that the freeze would "improperly elevate" the goals of simplification and stabilization over the welfare of ratepayers.⁷ According to California, ratepayers would be disadvantaged because the freeze would over-allocate costs to the intrastate jurisdiction, which is less competitive than the interstate arena.⁸ Moreover, California contends that if a freeze were initiated, it would be very difficult to conclude because of concerns for consumer rate shock and the administrative burdens of re-creating incumbent LECs' separations expertise and processes after they have been dormant.⁹

AT&T also submitted comments urging the Commission to reject the Joint Board's recommendation for a freeze.¹⁰ AT&T states that the Commission initiated a rulemaking proceeding nearly three years ago with the goal of revising the jurisdictional separations process considering the recent changes in law, technology and market structure.¹¹ According to AT&T, little has been accomplished in this regard in the past few years, which shows that a freeze would simply become the *de facto* rule. Also, AT&T claims that freezing category relationships and allocation factors is

⁷ Comments of California, p. 2.

⁸ *Id.*

⁹ *Id.*, p. 3.

¹⁰ Comments of AT&T Corp. ("AT&T"), p. 1.

¹¹ *Id.*, p. 2.

not consistent with the overall separations aim of assigning costs to the “appropriate” regulatory jurisdiction.¹²

In spite of these contentions, parties responding to the Notice overwhelmingly support the proposed freeze. The Telephone Association of New England (“TANE”), an association of 45 LECs, observes that “substantial changes in the communications market and technology are rapidly undermining the assumptions upon which the existing usage-based factors were adopted.”¹³ Therefore, TANE recommends that the Commission act promptly to prevent further distortions of jurisdictional allocations by freezing the local dial equipment minute (“DEM”) and other allocation factors.¹⁴

BellSouth filed comments in the same vein, also explaining the need for a freeze. BellSouth states:

A jurisdictional separations freeze is a pragmatic approach to reforming jurisdictional separations that results in a reasonable allocation of responsibilities between the state and federal jurisdictions. Further, as the Joint Board recognizes, a freeze contributes to the long-term goals of providing simplicity and stability to the jurisdictional separations process.¹⁵

GSA concurs with BellSouth’s conclusions.

Verizon’s comments and the accompanying affidavit rebut the contention that a freeze is not consistent with the aim of assigning costs to the “appropriate” jurisdiction. The Verizon affidavit explains that the current method of separating accounting costs between the intrastate and interstate jurisdictions is based largely on relative use, partly based on the belief that usage is the main driver of costs and partly in response

¹² *Id.*, p. 3.

¹³ Comments of TANE, p. 1.

¹⁴ *Id.*, pp. 1–2.

¹⁵ Comments of BellSouth, p. 3.

to the Supreme Court's admonition in *Smith v. Illinois* not to "ignore altogether the actual uses to which the property is put."¹⁶

This admonition is not on point today. An integrated digital network provides both interstate and intrastate services, and the costs of most elements of the network are not highly sensitive to usage.¹⁷ Thus, regardless of the separations procedure, the division of costs between the interstate and intrastate jurisdictions is highly arbitrary. Since there is no "correct" allocation, a moratorium does not violate the aim of an "appropriate" assignment — regardless of the amounts established as the "frozen" values.

The Verizon affidavit also allays concerns that the freeze would be a permanent fixture on the regulatory scene. The affiant explains that current separations procedures will become significantly more difficult to implement, less accurate, and less competitively neutral.¹⁸ Moreover, as GSA has also noted, the Commission must determine the appropriate separations procedures for services and elements that did not even exist a few years ago — including UNEs, Internet messages in packet format, and services jointly provided by multiple carriers over digital lines.¹⁹ In short, there are many drivers for change. Therefore, it seems unlikely that the freeze will become the *de facto* rule if the Commission adopts the Joint Board's recommendations.

The Pennsylvania Public Utility Commission ("PaPUC") explains that comprehensive separations reform is necessary because the current rules do not adequately account for the jurisdictional cost shifts arising from passage of the

¹⁶ Affidavit of William E. Taylor, Exhibit A to the Comments of Verizon, para. 8, citing *Smith v. Illinois Bell Telephone Company* 282 U.S. 133 (1930) ("*Smith v. Illinois*") at 151.

¹⁷ Comments of Verizon, pp. 1-3, and Affidavit of William E. Taylor, para. 7-8.

¹⁸ Affidavit of William E. Taylor, para. 6.

¹⁹ Comments of GSA, pp. 3-6.

Telecommunications Act, the development of new technologies, and the onset of local competition.²⁰ Rebutting the position espoused by California, PaPUC supports a freeze of category relationships and allocation factors until comprehensive reform can be achieved.²¹ The PaPUC believes that the freeze should be mandatory, but with a two-year maximum period, instead of five years recommended by the Joint Board.²² The PaPUC explains that a two-year period balances the time necessary to evaluate comprehensive separations reform against the potential for harm to subscribers for services in the interstate or intrastate jurisdictions.²³

As discussed previously in these Comments, GSA believes that there is considerable pressure to move on with separations reform. However, to maintain a nearer horizon for completion of this important objective, GSA endorses PaPUC's recommendation that the Commission adopt a two-year maximum freeze period.

III. CONTRARY TO CLAIMS BY SEVERAL PARTIES, THE COMMISSION SHOULD REQUIRE LECs TO CONTINUE COLLECTING AND REPORTING SEPARATIONS DATA DURING THE FREEZE.

SBC Communications ("SBC") concurs with the Joint Board's recommendation for a freeze of category relationships and allocation factors, but urges the Commission to suspend separations studies during the tenure of the freeze.²⁴ SBC states that elimination of the studies will remove a "regulatory burden" and "simplify" the

²⁰ Comments of PaPUC, p. 10, citing the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. § 151 *et seq.* ("Telecommunications Act").

²¹ Comments of PaPUC, p. 10.

²² *Id.*

²³ *Id.*, p. 5.

²⁴ Comments of SBC, p. 5.

separations process.²⁵ Moreover, SBC would agree to provide only “general, non-quantitative data” on the impact of the freeze if requested by the Commission.²⁶

Similarly, the United States Telecom Association (“USTA”) opposes reporting and monitoring during the freeze.²⁷ USTA also urges the Commission to encourage local regulators to accord the same “deference” at the state level.²⁸ These recommendations reflect USTA’s expectation of full transition to a deregulated, competitive environment within five years, and the association’s position that the Commission should consider foregoing any interstate–intrastate separations procedure following the term of the freeze.²⁹

GSA urges the Commission to reject these contentions. GSA explained in its Comments that the existing accounting and reporting procedures for incumbent LECs have numerous benefits.³⁰ For example, annual reporting of separated data in a uniform format is useful for state regulators in continuing surveillance over local exchange services provided by incumbent LECs that still have market power over end users and other carriers.³¹ Incumbent LECs enjoy substantial market power in nearly all regions of the nation. Indeed, the Industry Analysis Division’s *Trends in Telephone Service* shows that even in New York state, where competition is generally perceived to be very active, only 1.2 percent of the switched access lines were provided to

25 *Id.*

26 *Id.*

27 Comments of USTA, pp. 7–9.

28 *Id.*, p. 9.

29 *Id.*, pp. 8–9.

30 Comments of GSA, pp. 8–9; and *In the Matter of Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase I*, CC Docket No. 99–253, Comments of GSA, August 23, 1999, pp. 3–11; and Reply Comments of GSA, September 9, 1999, pp. 3–13.

31 *Id.*, Reply Comments of GSA, pp. 3–8.

competitive LECs under UNE arrangements in June 1999, the most recent month for which data are available.³²

With reporting, it is valuable to continue to display the most current data. Thus, GSA departs from the Joint Board's recommendations by urging the Commission to continue requirements for price cap carriers to update jurisdictional allocation factors during the term of the freeze.³³ Annual reports will have severely reduced value if they do not reflect current data, particularly since the underlying conditions are changing rapidly, as discussed above. Moreover, updated data will be vital in assessing cost allocation procedures that are proposed to replace the current separations process.

In comments responding to the Notice, WorldCom identifies an additional need for data during the term of the freeze. WorldCom states that the Joint Board suggests that the primary problem posed by UNEs and the new technologies is that "the current Part 36 rules do not appropriately address new technologies such as packet switching," leaving carriers "to their own discretion as to the method of allocating facility costs among Part 36 categories."³⁴ As a result, there may be significant differences among carriers in how they treat the new equipment for separations purposes.³⁵ To help the Commission design procedures to mitigate the impact of inconsistencies, WorldCom urges the Commission to require LECs to report to the Joint Board how they are currently treating UNEs and other new technologies enumerated in the *Recommended Decision* when they implement the separations process.³⁶

³² Industry Analysis Division, *Trends in Telephone Service*, March 2000, Table 9.4.

³³ Comments of GSA in response to the current Notice, pp. 8-9.

³⁴ Comments of WorldCom, pp. 6-7.

³⁵ *Id.*, p. 7.

³⁶ *Id.*, p. 8.

Referencing comments by Sprint earlier in this proceeding, AT&T explains that the need to reduce the complexity of the separations methodologies employed by the larger LECs is "highly overrated."³⁷ Sprint explained that the LECs have automated the process of complying with the separations rules so that the administrative burdens are not significant.³⁸

Moreover, GSA has explained that with recent mergers, carriers under price cap regulation have very substantial resources, and will not experience an unreasonable burden with a requirement to continue the studies and analyses in the separations process during the next few years.³⁹ To reduce the burden on the smaller entities, GSA concurs with the Joint Board's recommendation to eliminate the requirement for rate-of-return carriers to calculate updated factors during the freeze.

³⁷ Comments of AT&T, p. 5, citing Comments of Sprint, December 10, 1997, p. 8.

³⁸ *Id.*

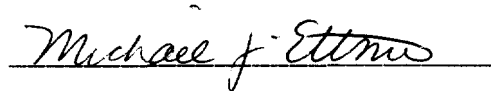
³⁹ Comments of GSA, p. 9.

IV. CONCLUSION

As a major user of telecommunications services, GSA urges the Commission to implement the recommendations set forth in these Reply Comments.

Respectfully submitted,

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A handwritten signature in cursive script, reading "Michael J. Ettner", is written over a horizontal line.

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October 10, 2000

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I, MICHAEL J. ETTNER, do hereby certify that copies of the foregoing "Reply Comments of the General Services Administration" were served this 10th day of October, 2000, by hand delivery or postage paid to the following parties.

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